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October 7, 1998

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Magalie Roman Salas, Secretary
Federal Communications Commission
Washington, D.C. 20554

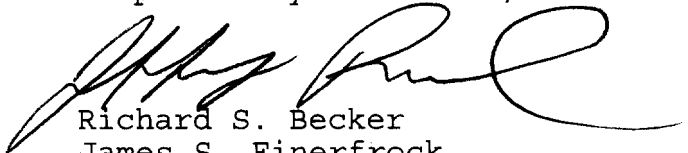
Re: Petition of US WEST
Communications, Inc. for
Forbearance from Regulation as
a Dominant Carrier in the
Phoenix, Arizona MSA
CC Docket No. 98-157

Dear Ms. Roman Salas:

Transmitted herewith on behalf of TSR Wireless LLC ("TSR Wireless") are an original and four (4) paper copies of TSR Wireless's "Comments" with respect to the above-referenced proceeding.

Should any questions arise with respect to this matter, please communicate directly with this office.

Respectfully submitted,



Richard S. Becker
James S. Finerfrock
Jeffrey E. Rummel
Attorneys for TSR Wireless LLC

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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OCT - 7 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of US WEST Communications,) CC Docket No. 98-157
Inc. for Forbearance from)
Regulation as a Dominant Carrier in)
the Phoenix, Arizona MSA)

To: The Commission

COMMENTS

TSR Wireless LLC ("TSR Wireless"), by its attorneys and pursuant to the Public Notice in the above-captioned proceeding released on August 28, 1998,¹ hereby submits the following Comments in opposition to the request of US West Communications, Inc. ("US West") that the Commission forbear from regulating US West as a dominant carrier in the provision of high capacity services in the Phoenix, Arizona Metropolitan Statistical Area ("MSA"). In support of these Comments, the following is respectfully shown:

I. Introduction

1. In its "Petition Of US West Communications, Inc. For Forbearance" ("Petition") filed with the Commission on August 24, 1998, US West requested that the Commission exercise its authority to forbear from regulating US West as a dominant carrier in the provision of high capacity services in the Phoenix, Arizona MSA. In support of its Petition, US West attempted to demonstrate that, pursuant to the factors enunciated in Section 10 of the

¹Public Notice, Petition of US West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Docket No. 98-157, DA 98-1712 (released August 28, 1998) ("Public Notice").

Telecommunications Act of 1996 (the "1996 Act"),² dominant carrier regulation of US West's high-capacity services in Phoenix is not necessary to ensure that rates and practices are just, reasonable and not unreasonably discriminatory³ and that such regulation is not necessary to protect consumers.⁴ Finally, US West asserted that forbearance from dominant carrier regulation is consistent with the public interest.⁵

2. TSR Wireless is a Commercial Mobile Radio Service ("CMRS") provider licensed pursuant to Parts 22 and 90 of the Commission's Rules to provide one-way paging service throughout the United States, including one-way paging service in the geographic area defined as the Phoenix MSA in the State of Arizona. US West provides certain telephone facilities ("TSR Wireless Interconnection") necessary for TSR Wireless to interconnect its one-way paging systems to the public switched telephone network ("PSTN") in various states, including Arizona. Among the facilities included in the TSR Wireless Interconnection are T-1 circuits necessary to connect US West's offices to the TSR Wireless network for delivery of US West-originated traffic for termination onto the TSR Wireless network.

3. The T-1 circuits utilized by TSR Wireless as part of the TSR Wireless Interconnection are among the "high-capacity services"

²47 U.S.C. §160.

³Petition at 35-37.

⁴Id. at 38.

⁵Id. at 38-44.

which US West believes the Commission should forbear from regulating.⁶ As set forth herein, the facts underlying TSR Wireless's experience with US West with respect to the TSR Wireless Interconnection demonstrate that US West must continue to be regulated as a dominant carrier in order to protect high capacity consumers, to the extent possible, from US West's existing unreasonable and discriminatory practices regarding the imposition of interconnection charges. In this regard, US West has taken advantage of its position as the dominant carrier by imposing on TSR Wireless charges for interconnection of TSR Wireless's CMRS one-way paging system to US West's landline telephone network ("Contested Interconnection Charges") that are in violation of the Act, the Telecommunications Act of 1996, the Commission's First Report And Order and Second Report And Order And Memorandum Opinion And Order in CC Docket No. 96-98, and the Rules and regulations of the Commission adopted therein.⁷ In addition, contrary to its

⁶The T-1 circuits utilized by TSR Wireless fall within the "DS1" category of high capacity services identified by US West in the Petition. See Petition at 1.

⁷See ¶5, infra. See 47 U.S.C. §§201, 202 and 251; 47 C.F.R. §§20.11, 51.100, 51.305, 51.703, 51.709 and 52.15; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98 and 95-185, First Report And Order, 11 FCC Rcd 15499, 16016, 16027 (1996); recon., 11 FCC Rcd 13042 (1996), second recon., 11 FCC Rcd 19738 (1996); third recon., 12 FCC Rcd 12460 (1997); aff'd in part, vacated in part, Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), modified, 1997 U.S. Appeal, LEXIS 28652 (8th Cir. Oct. 14, 1997), cert. granted on other grounds, 66 USLW 3387 (U.S. Jan. 26, 1998 (Nos. 97-286, et al.); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98 and 95-185, Second Report And Order And Memorandum Opinion And Order, 11 FCC Rcd 19392, 19537-19539 (1996).

assertion in the Petition, US West has, in fact, engaged in anti-competitive and discriminatory practices with respect to TSR Wireless by imposing a "Stop Provisioning Order" on TSR Wireless pursuant to which US West refuses to provide additional interconnection services or facilities to TSR Wireless unless and until TSR Wireless pays all of the above-referenced outstanding and impermissible charges, notwithstanding the pendency of formal proceedings before the Commission. As set forth herein, TSR Wireless has been forced to defend itself against US West's abuses as a dominant carrier by initiating proceedings at the Commission to enforce the Commission's clear regulatory requirements. By brazenly engaging in the above practices and demonstrating a willful disregard for the pro-competition objectives of the 1996 Act, US West itself has proven that the assumptions underlying its Petition are not valid. As a result, the Commission should deny the Petition.

II. US West's Petition Should Be Denied

4. In requesting that the Commission forbear from regulating US West as a dominant carrier in the provision of high capacity services in the Phoenix, Arizona MSA, US West concluded that such regulation "is not necessary to protect high capacity consumers from unreasonable rates or discriminatory practices."⁸ This conclusion was based primarily on the assumptions that US West does not have the "ability to impose anti-competitive prices and other

⁸Petition at 38.

terms and conditions of services"⁹ and that "US West does not have the power to control price in [the Phoenix MSA] nor the ability to act in a discriminatory manner."¹⁰ By these Comments, TSR Wireless demonstrates that the above assumptions do not accurately apply to US West's above-described treatment of TSR Wireless with respect to the charges imposed on TSR Wireless for the TSR Wireless Interconnection and that US West is not a proper candidate for the Commission's exercise of its forbearance authority under the 1996 Act. As a result, the Commission should find that forbearance from the regulation of US West is not in the public interest.

5. US West's actions demonstrate that its rates and practices with respect to the TSR Wireless Interconnection are, in fact, unreasonable and discriminatory and that forbearance from regulating US West as a dominant carrier is not justifiable under the goals and requirements of the 1996 Act. Specifically, In a "Formal Complaint" ("Complaint") filed with the Commission on December 24, 1997, and an "Informal Complaint" filed with the Commission on June 12, 1998,¹¹ TSR Wireless requested relief from

⁹Id. at 6.

¹⁰Id. at 8.

¹¹TSR Wireless is the successor-in-interest to TSR Paging Inc. ("TSR Paging") and American Paging, Inc. and its subsidiaries (collectively, "API") as a result of a Commission authorized merger ("Merger") between TSR Paging and API. See, e.g., File No. 21093-CD-AL-98. Pursuant to the Merger, all of the Commission authorizations of TSR Paging and API were assigned to TSR Wireless. The above-referenced Complaint was filed on behalf of TSR Paging prior to the consummation of the Merger with respect to TSR Paging's CMRS paging systems in the State of Arizona. The Informal Complaint was filed by TSR Wireless with respect to the CMRS paging systems obtained from API in various states, including Arizona.

the Commission with respect to, inter alia, the above-referenced Contested Interconnection Charges imposed on TSR Wireless with respect to the TSR Wireless Interconnection . These Contested Interconnection Charges include, but are not limited to, the following charges which were imposed by US West purportedly under the authority granted to US West as the dominant carrier in Arizona:

- i. Charges for the above-described T-1 circuits necessary to connect US West offices to the TSR Wireless network in Arizona for delivery of LEC-originated traffic for termination onto TSR Wireless's network.
- ii. Installation charges for T-1 circuits in Arizona.

However, as explained above, the Contested Interconnection Charges violate clear statutory and regulatory requirements with respect to the high-capacity facilities obtained from US West by TSR Wireless. See p.3, supra. In addition, in the Complaints, TSR Wireless sought relief from US West's imposition of the above-referenced "Stop Provisioning Order" pursuant to which US West refuses to provide additional interconnection services or facilities to TSR Wireless unless and until TSR Wireless pays all outstanding, impermissible charges. To date, US West has not lifted this Stop Provisioning Order.¹²

6. US West's ongoing violation of Commission CMRS interconnection regulations, and continued imposition of the "Stop

The Complaint and Informal Complaint will be referred to herein as the "Complaints". The Complaints remain pending before the Commission under File No. E-98-13.

¹²See e.g., Formal Complaint, p.5-19.

Provisioning Order", has precluded TSR Wireless from entering into good faith negotiations with US West with respect to the terms and conditions of an interconnection agreement pursuant to the 1996 Act.¹³ In this regard, TSR Wireless has refused thus far to issue a request for interconnection unless US West first terminates the Contested Interconnection Charges. Any attempt by US West to force TSR Wireless into negotiations without US West first complying with applicable statutory and regulatory interconnection requirements constitutes an improper attempt to bully paging carriers into having to negotiate for the very provisions that the Commission itself has already mandated.¹⁴ In this regard, TSR Wireless respectfully submits that US West's proven inability to enter into good faith negotiations with respect to the TSR Wireless Interconnection, where such negotiations are regulated by clear and unambiguous statutory requirements, weighs against releasing US West from dominant carrier regulation and thereby permitting US West even more freedom to disadvantage those entities relying on US West for high capacity service.

6. By: (i) imposing the Contested Interconnection Charges; (ii) inflexibly terminating provisioning of services; (iii) attempting to prematurely force TSR Wireless into interconnection negotiations; and (iv) forcing TSR Wireless to litigate these issues at considerable expense, all in violation of applicable

¹³See e.g., Initial Brief of TSR Wireless LLC filed with the Commission on June 26, 1998, p.20 (File No. E-98-13).

¹⁴Id. at 20-24.

statutory and regulatory requirements, US West's actions must be considered an alarming, prima facie, abuse of its dominant carrier status and its indisputable market power. This behavior is in direct conflict with the Commission's efforts to introduce competition to the local exchange marketplace and has forced TSR Wireless into expending considerable resources in litigating these issues before the Commission. As such, US West's actions, in apparent violation of clear statutory and regulatory mandates, makes US West a poor choice of carrier to escape dominant carrier regulation pursuant to the provisions of the 1996 Act. Accordingly, US West's Petition requesting forbearance must be denied.

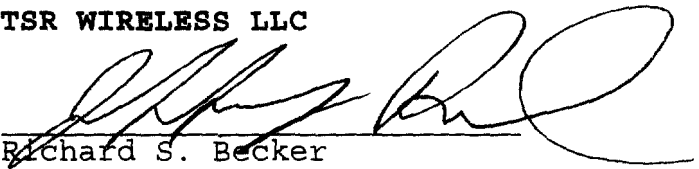
III. Conclusion

7. For the foregoing reasons, TSR Wireless opposes the Petition of US West requesting that the Commission forbear from regulating US West as a dominant carrier in the provision of high capacity services in the Phoenix, Arizona MSA.

Respectfully submitted,

TSR WIRELESS LLC

By:


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Its Attorneys

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(202) 833-4422
Date: October 7, 1998

CERTIFICATE OF SERVICE

I, Susan Mitchual, a secretary in the law firm of Richard S. Becker & Associates, Chartered, hereby certify that I have on this 7th day of October, 1998, sent by First Class United States mail, postage prepaid, copies of the foregoing "**COMMENTS**" to the following:

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